

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1264 of 1986

with

CRIMINAL APPEAL No 1265 of 1986

with

CRIMINAL APPEAL NO. 892 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJRAT

Versus

CHATUBHA NAVLSANG and ors.

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Appearance:

1. Criminal Appeal No. 1264 of 1986  
MR ST MEHTA, A.P.P.for appellant  
MR DN VORA for Respondents
2. Criminal AppealNo 1265 of 1986  
MR ST MEHTA,A.P.P.for appellant  
Respondents served
3. Criminal Appeal No. 892 of 1995

Mr. D.N.Vora, for appellants  
Mr. S.T.Mehta, A.P.P.for respondents

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CORAM : MR.JUSTICE J.M.PANCHAL  
and

MR.JUSTICE M.H.KADRI

Date of decision: 26/11/96

ORAL JUDGEMENT : (Per : Panchal,J.):-

All these three appeals are directed against common judgment and order dated May 31,1986, rendered by the learned Assistant Sessions Judge, Gondal, in Sessions Case no. 5/86 and, therefore, we propose to dispose them of by this common judgment.

2. There was a meeting of members of Sodvadar Gram Panchayat, Sodvadar, Taluka : Jamkandorna, District : Rajkot on January 21,1985. The said meeting was attended by original informant Ramnikbhai and Sarpanch Jayantibhai. After the meeting was over, members who had attended it, had left the premises in which meeting was held, but Jayantibhai and complainant Ramnikbhai did not leave premises immediately. Around 9.30 p.m. original informant and Sarpanch Jayantibhai came out of the said building. Jayantibhai asked the complainant to wait for a while, as he wanted to ease himself. Thereafter Jayantibhai went to Pan Shop. At that time, accused nos.2,5,6,7,9,11 and 14 rushed towards Sarpanch Jayantibhai and accused nos.11 & 14 caused hurt to the Sarpanch. The original informant Ramniklal went to a nearby shop and informed police on telephone about the incident. Thereafter he went to arrange for vehicle. It is the prosecution case that in the incident, Sarpanch Jayantibhai, his brother Mansukhbhai Dahyabhai, Velji Becharbhai, Chhaganbhai Devshi and Sarojben received injuries. After arrival of vehicle, Sarpanch Jayantibhai was removed to house of one Vasantbhai and from there, to Hospital situated at Dhoraji. Sarpanch Jayantibhai, Maganbhai Ratnabhai, Veljibhai Becharbhai, Mansukhbhai Dahyabhai were referred to Rajkot Government Hospital for further treatment. Operation was also performed on Sarpanch Jayantibhai on January 28,1985 by Dr. Pankaj Patel at Rajkot Government Hospital, as he had sustained fracture. After lodging of occurrence report, investigation was taken over by senior P.S.I. The investigating officer visited the scene of offence, prepared panchnama of scene of offence and recorded statements of witnesses. On completion of investigation,

the respondents were chargesheeted in the Court of learned Judicial Magistrate, First Class, Dhoraji under sections 143, 147, 148, 120-B, 307, 323, 325 read with section 149 of the Indian Penal Code. As the offence under section 307 I.P.C. is exclusively triable by Sessions Court, the case was committed to Sessions Court for trial and it was numbered as Sessions Case no.5/86, in the Court of learned Assistant Sessions Judge, Gondal.

3. The learned Judge framed charge at exh.1 against the accused under sections 143, 147, 148, 120-B of the Indian Penal Code. Accused nos.5,7,9,10,11,12 & 14 were charged under section 307 read with section 149 of the Indian Penal Code for causing injuries to Jayantibhai Dahyabhai. Accused no.6 was charged under section 325 of the Indian Penal Code and rest of the accused were charged under section 325 read with section 149 of the Indian Penal Code for causing injuries to Sarojben. Accused nos.6 & 7 were charged under sections 325 & 323 I.P.C. respectively; whereas rest of the accused were charged under sections 325, 323 read with section 149 of the Indian Penal Code for causing injuries to Chhagan Devshi. Accused nos.1, 4, 9, 10 & 14 were charged under sections 323 & 325 I.P.C.; whereas rest of the accused were charged under sections 323, 325 read with section 149 of I.P.C. for causing injuries to witness Mansukh Dahyabhai. Accused no.4 was charged under section 323; whereas rest of the accused were charged under section 323 read with section 149 of I.P.C. for causing injury to Velji Bechar. Accused no.14 was charged under section 323 whereas rest of the accused were charged under section 323 read with section 149 I.P.C. for causing hurt to Hansaben. Accused no.7 was charged under section 323 and rest of the accused were charged under section 323 read with section 149 of I.P.C. for causing hurt to Magan Ratna. Accused nos.3,8 & 14 were also charged under section 506(2) of I.P.C. for giving threat to kill Jayantibhai Dahyabhai and Hansaben.

4. The charge was read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried.

5. The prosecution, therefore, examined (1) complainant Ramniklal Bhovanbhai, PW.1, exh.22, (2) Panch witness Ramesh Gaurishanker, PW.2, exh.24, (3) Panch witness Babubhai Hirabhai, PW.3, exh.39, (4) Panch witness Ramniklal Mavjibhai, PW.4, exh.40, (5) Panch witness Jamnadas Narshibhai, PW.5, exh.42, (6) Surveyor who prepared sketch as PW.6, exh.45, (7) Ramniklal Chhaganbhai, PW.7, exh.46, (8) Panch witness Damji Ramji,

PW.8, exh.48, (9) Mansukhlal Pragjibhai, PW.9, exh.51, (10) Madhubhai Bhikhabhai, PW.10, exh.53, (11) Sarpanch Jayantibhai Dahyabhai, PW.11, exh.59, (12) injured Mansukh Dahyabhai PW.12, Exh.60, (13) Magan Ratna, PW.13, exh.61, (14) Chhagan Devji, PW.14, exh.62, (15) Velji Bechar, PW.15, exh.63, (16) Sarojben Chhaganbhai, PW.16m exh.65m (17) Hansaben Arjanbhai, PW.17, exh.66, (18) Medical Officer Dr. Dayabhai Golabhai, PW.18, exh.67, (19) Medical Officer, Dhoraji Dr.Donga, PW.19, exh.73, (20) Medical Officer, Rajkot Dr.R.R.Agravat, PW.20, exh.78, (21) Orthopaedic Surgeon, Junagadh Dr. Nandlal Mohanlal, PW.21, exh.83, (22) Head Constable Deetaji Veljibhai, PW.22, exh.85, (23) Jamadar Mohanlal Jethalal, PW.23, exh.89, (24) Head Constable Sagram Naranbha, PW.24, exh.101, (25) Head Constable Raghobhai Palabhai, PW.25, exh.103, (26) Medical Officer Dr. Mukesh Mehta, PW.26, exh.107, (27) Head Constable Keshavji Narshibhai, PW.27, exh.110, (28) Harsukh Hansrajibhai, PW.28, exh.112, and (29) investigating officer Mr. J.M.Thacker, PW.29, exh.117, to prove its case.

6. The prosecution also relied on documentary evidence, such as complaint filed by Ramniklal, different panchnamas prepared during the course of investigation, injury certificates of injured witnesses issued by medical officers, panchnama of place of occurrence etc. to prove its case.

7. After the witnesses for the prosecution were examined, learned Judge questioned the accused generally on the case and recorded their statements under section 313 of the Code of Criminal Procedure, 1973. In their further statements, accused stated that case of the prosecution was false, but did not lead any evidence in defence.

8. On appreciation of evidence, the learned Judge held that prosecution has not proved that on January 21, 1985 the accused formed an unlawful assembly, common object of which was to commit offence punishable under section 307 of the Indian Penal Code. The learned Judge found that accused no.14 gave stick blows to Sarpanch Jayantibhai Dahyabhai and committed offence punishable under section 325 of I.P.C., as fracture was caused on the hand of Jayantibhai. The learned Judge concluded that prosecution has proved that accused no.4 voluntarily caused hurt to Mansukh Dahyabhai and committed offence punishable under section 323 I.P.C. The learned Judge also accepted the prosecution case and held that accused no.7 voluntarily caused hurt to injured Maganbhai and was

liable to be convicted under section 323 I.P.C. The learned Judge found that prosecution has proved beyond reasonable doubt that accused no.6 voluntarily caused hurt to Sarojben; whereas accused nos.6 & 7 caused hurt to Chhagan Devshi and committed offence punishable under section 323 I.P.C. Lastly, the learned Judge concluded that prosecution has failed to prove that the accused committed offence punishable under section 506(2) of the Indian Penal Code. Having regard to the medical evidence and the circumstances of the case, the learned Judge concluded that offence punishable under section 307 of I.P.C. was not made out by the prosecution against any of the accused.

9. In view of the above referred to conclusions, the learned Judge convicted original accused nos.7,13 & 14 under section 325 I.P.C. and sentenced them to R.I. for three months. Original accused nos.4 & 6 came to be convicted under section 323 I.P.C. and a fine of Rs.250/i/d. imprisonment of 15 days was imposed on each of them. Accused no.7 was convicted under section 323 I.P.C. and ordered to pay a fine of Rs.250/- i/d. to undergo R.I. for 15 days. Accused no.4 was also convicted under section 323 I.P.C. and sentenced to pay a fine of Rs.250/- i/d. to undergo imprisonment for 15 days. The learned Judge by judgment and order dated May 31,1986 acquitted all the accused of the offences punishable under sections 147, 148, 149, 307 read with section 149, 120-B, 506(2) of the Indian Penal Code and rest of the offences with which they were charged.

10. Criminal Appeal no.1264/86 is directed against acquittal of the accused under sections 147, 148, 149, 307 read with section 149, 120B and 506 of the Indian Penal Code; whereas in Criminal Appeal no.1265/86, State has prayed to enhance sentences imposed on original accused nos.4,6, 7,10 & 14. Original accused nos.4,6,7,10 & 14 had challenged their conviction and sentences imposed on them by filing Criminal Appeal no.17/87 in the Sessions Court, Rajkot. A Note was filed by the learned Public Prosecutor, High Court seeking appropriate direction from the Court for transferring Criminal Appeal no.17/87, which was pending before the Sessions Court, Rajkot to High Court for disposal, as acquittal appeal as well as enhancement appeal instituted by the State Government from the common judgment were admitted and pending for final disposal. The request made by the learned Public Prosecutor, High Court, Ahmedabad was accepted and the Court (Coram: K.J.Vaidya & K.R.Vyas,JJ.) by an order dated September 7,1995 directed transfer of Criminal Appeal no.17/87 to High

Court, which is now numbered as Criminal Appeal no. 892/95.

11. Mr. S.T.Mehta, learned A.P.P. has taken us through the entire evidence on record. It was pleaded by him that having regard to the evidence of injured witnesses which is supported by medical evidence, acquittal appeal deserves to be accepted and the respondents should be convicted under sections 147, 148, 149, 307 readwith section 149, 120B and 506 of the Indian Penal Code. The learned A.P.P. in the alternative contended that sentences imposed on accused nos.4,6,7,10 & 14 are not only grossly inadequate, but unduly lenient and, therefore, Criminal Appeal no.1265/86 should be allowed and adequate sentences should be imposed on the accused, who are convicted under sections 323 & 325 if the Indian Penal Code. Mr. D.N.Vora, learned Counsel for the original accused nos.4,6,7,10 & 14 contended that cogent and convincing reasons have been given by the learned Judge while acquitting the accused of the offences punishable under sections 143, 147, 148, 149, 302 read with sections 149, 120-B & 506(2) of the Indian Penal Code and in absence of good ground, acquittal of the accused should not be interfered with by the Court. The learned Counsel further submitted that in view of the discrepancies appearing in the testimony of eye witnesses and medical evidence, accused nos.4,6,7,10 & 14 deserve to be acquitted by allowing Criminal Appeal no.892/95. In the alternative, it was pleaded by the learned Counsel for the convicted accused that there was no prior enmity between convicted accused and injured witnesses and having regard to the circumstances of the case as well as long passage of time between the date of incident and the date on which appeals are heard, benefit of probation should be given to the convicted accused under section 360 of the Code of Criminal Procedure,1973.

12. As is apparent, basis of the prosecution case is that all the accused formed an unlawful assembly, common object of which was to cause hurt to Jayantibhai and in furtherance of their common object they caused hurt to Jayantibhai, his brother Mansukhbhai, Sarojben, Magan, Devshibhai. It is relevant to notice that as testified by the complainant, there was a meeting of members of Sodvadar Gram Panchayat on January 21, 1985 and election of the members to the panchayat was to be held on February 3, 1985. Sarpanch Jayantibhai in his sworn testimony stated that all the accused ran towards him and, therefore, to save himself he ran towards the house of his brother Vasantbhai and at that time, accused

nos.10 & 14 gave stick blows on his hand and leg. Mansukhbhai Dahyabhai, exh.60 has stated on oath before the Court that accused no.4 gave him stick blow on nose and his brother Jayantibhai was assaulted by accused nos.1, 10, 11 & 14. In his deposition, this witness has referred to presence of 8 accused. He has also referred to utterances made by the accused. Injured Magan Ratna exh.61 has testified that only accused no.9 was armed with axe; whereas rest of the accused were armed with sticks. In his evidence Magan Ratna has deposed that accused Nos.10 & 11 were assaulting Sarpanch Jayantibhai. This witness has stated that injury was caused to him by means of stick by accused no.14. The witness has claimed that accused nos. 1,2,4,5, 7, 8,9, 10, 11 & 12 were present. Thus, this witness in all involves and refers to presence of 11 accused. Witness Chhagan Devshi in his evidence before the Court has stated that accused nos.11 and 14 were beating Sarpanch Jayantibhai; whereas his daughter was assaulted by accused no.6. This witness refers to the presence of accused nos.11, 7, 6, 5, 1, 4, 3, 9, 12 & 2. Injured Sarojben at exh.65 has testified before the Court that accused nos.14, 7, 11,10, 9, 12 and 2 had assaulted Sarpanch Jayantibhai. She has further deposed before Court that accused no.6 caused hurt on her nose by means of handle of an axe. She has also stated that injured Mansukh and her father Chhagan were assaulted by 3 accused. Hansaben exh.66 has deposed before Court that accused nos.14, 10, 9 and 1 had mounted attack on Sarpanch Jayantibhai and when she tried to save Jayantibhai, she was caused injury. However, she has not attributed her injury to any of the accused. Complainant Ramnikbhai in his testimony before Court has stated that accused nos.1, 11, 5, 9, 6, 14 and 7 rushed towards Jayantibhai and accused nos.11 & 14 gave stick blows to Jayantibhai. Thus, the complainant, who claims to be an eye witness, has referred to presence of 7 accused. It is pertinent to note that one Velji Bechar, who was also injured in the incident and who was examined at exh.63, did not support the prosecution case and was declared hostile witness. This injured witness has referred to presence of only 3 accused. From the panchnama of occurrence, it is evident that place where offence took place is an open piece of land which is situated near house of accused no.14. Place of occurrence is also surrounded by other residential houses. Having regard to the nature of evidence led by the prosecution, we are of the opinion that prosecution has failed to prove that all the accused had formed an unlawful assembly on the date of incident, common object of which was to belabour Sarpanch Jayantibhai and others. In view of the

discrepancies in the evidence of injured witnesses, we are of the opinion that prosecution has failed to establish that all the accused were members of an unlawful assembly and each had shared common intention to commit offence as alleged by the prosecution. There is no manner of doubt that all the accused had not participated in the incident. The medical evidence on the record shows that Jayantibhai had sustained 2 CLWs; whereas his brother Mansukhbhai had sustained only one injury. Magan Ratna, according to the medical evidence, had sustained two injuries, whereas Chhagan Devshi and Velji had sustained one injury each as is indicated in injury certificate in exh.35. Similarly, Hansaben had received only one abrasion. If all the accused had formed unlawful assembly, common object of which was to cause hurt to Sarpanch Jayantibhai and others, more and serious injuries would have been found on the person of the injured witness. On the facts and in the circumstances of the case, finding recorded by the learned Judge that the prosecution has failed to prove that the accused had formed an unlawful assembly on January 21, 1985, is eminently just and does not call for any interference by this Court in acquittal appeal filed by the State Government. As the prosecution has failed to prove that all the accused had formed an unlawful assembly, common object of which was to cause hurt to Jayantibhai and others, no exception can be taken to acquittal of the accused of the offences punishable under sections 147, 148 of I.P.C. Similarly, no evidence worth the name is led by the prosecution to prove that criminal conspiracy was hatched by the accused as contemplated by section 120-B of the Indian Penal Code. Under the circumstances, acquittal of the accused under section 120-B of I.P.C. is also just and legal. The learned Judge while convicting accused nos. 7, 10 & 14 under section 325 of I.P.C. has taken into consideration the manner in which incident had taken place and the injuries sustained by the injured witnesses. Having regard to the nature of weapons used, the intention expressed by the accused nos. 7, 10 & 14 at the time of incident, motive for commission of the offence, nature and size of injuries, parts of body of the victims selected for causing injuries and severity of the blows, we are of the opinion that the learned Judge was justified in acquitting the accused of the offence punishable under section 307 read with section 149 of I.P.C. The prosecution has failed to prove that accused nos. 7, 10 & 14 inflicted any injury on any vital part of the body of victims while committing the assault. There is nothing to show that accused nos. 7, 10 & 14 were inspired by the intention to commit murder of Sarpanch Jayantibhai.

Under the circumstances, acquittal of the accused under section 307 I.P.C. cannot be said to be erroneous at all. For the purpose of constituting offence under section 307 I.P.C. two ingredients are required to be proved by the prosecution, firstly, an evil intent or knowledge, and secondly, an act done. Having regard to the facts and circumstances of the case, we are satisfied that the respondents can not be convicted under section 307 of the Indian Penal Code. Again, prosecution witnesses have not stated anything about threat to kill Jayantibhai Dahyabhai and Hansaben having been administered by accused nos.3,8 & 14. Therefore, their acquittal under section 506(2) of I.P.C. is unassailable and deserves to be confirmed.

13. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) GIRIJA NANDINI DEVI & Ors. vs. BIJENDRA NARAIN CHAUDHARY, A.I.R. 1967 S.C. 1124, and (2) STATE OF KARNATAKA vs. HEMA REDDY AND ANOTHER, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge. Therefore, acquittal appeal deserves to be rejected.

14. Coming to the enhancement appeal, we find that before imposing sentences, all the relevant factors have been taken into consideration by the learned Judge and this is apparent from para-71 of the impugned judgment. It is relevant to note that though the prosecution alleged that Bhanuben and Kantaben were injured in the incident,

they were not examined as witnesses in the case. N.C.complaint filed by accused no.14 is on the record of the case. In view of the nature of the weapons used, intention expressed by the accused at the time of incident, motive for commission of the offences, nature and size of the injuries sustained by the victims etc., it is difficult to conclude that the sentences imposed on the accused are grossly inadequate or unduly lenient. On the facts and in the circumstances of the case, we are of the firm opinion that adequate sentences have been imposed on the accused who are convicted and no ground is made out by the State Government for enhancing sentences imposed on them. Therefore, Criminal Appeal no.1265/86, which is filed for enhancement of sentences is liable to be dismissed.

15. The submission of Mr.Vora, learned Counsel for the accused nos.4,6,7,10 & 14 that conviction of the accused nos.4,6,7,10 & 14 as well as sentences imposed on them deserve to be set aside, has no substance. As observed earlier, Jayantibhai in his sworn testimony exh.59 has stated that accused no.14 gave stick blow on his left hand, as a result of which he sustained a fracture; whereas accused nos.10 & 7 had also given stick blows on his hand and leg. In material particulars, he is corroborated by the testimony of his brother Mansukhbhai which is recorded at exh.60. Mansukhbhai is an injured witness and, therefore, his presence at the place and time of incident can hardly be doubted. The testimony of injured Jayantibhai is also corroborated in material particulars by medical evidence. The medical evidence clearly shows that injured Jayantibhai had sustained a fracture and he was operated upon. On the facts and in the circumstances of the case, we are of the view that conviction of the original accused nos.7, 10 & 14 under section 325 of I.P.C. is wellfounded and does not call for any interference in the present appeal. Again, evidence of injured Magan Ratna shows that accused no.7 had voluntarily caused hurt to him by means of stick. This witness is completely corroborated by eye witness Chhagan Devshi whose deposition is recorded at exh.62. The witness is also fully supported by medical evidence on record. Under the circumstances, conviction of accused no.7 under section 323, is eminently just and deserves to be upheld. Similarly, evidence of injured Velji Bechar shows that accused no.4 had voluntarily caused hurt to him by means of stick. Though this witness was declared hostile, he is materially corroborated by the medical evidence so far as the injuries sustained by him are concerned. Having regard to the nature of injuries sustained, it cannot be said

that any error is committed by the learned Judge in convicting accused no.4 under section 323 of I.P.C. for causing simple hurt to Velji Bechar. It is relevant to note that all the injured witnesses have been searchingly cross-examined on behalf of the accused. Though there are minor discrepancies in their evidence, they do not stand discredited so far as injuries sustained by them are concerned. On overall view of the matter, we are satisfied that the learned Judge was justified in convicting the accused nos.7, 10 & 14 under section 325 of I.P.C. and accused nos.4 & 6 under section 323 I.P.C. Similarly, the leaned Judge has committed no error in convicting accused nos.4 & 7 under section 323 I.P.C. For all these reasons, Criminal Appeal no.892/95 is liable to be rejected.

16. As noticed earlier, accused nos.7, 10 & 14 are convicted under section 325 I.P.C. and ordered to undergo imprisonment for three months. The incident took place on January 21,1985. During the trial, accused nos.7,10 & 14 were on bail. It is not brought to the notice of the Court by the learned Additional Public Prosecutor that after their release on bail till this date, accused nos.7,10 & 14 have misused the liberty granted to them in any manner or involved themselves in commission of other offences. Having considered the nature of weapons used by them, intention expressed by them at the time of incident, motive for commission of the offences, nature and size of the injuries and the parts of bodies of the victims of the offence, the passage of time between the date of the incident and the date on which appeals are heard, the age character and antecedents of accused nos.7,10, 14, the circumstances in which the offences were committed we feel expedient that accused nos.7,10 & 14 should be released on probation of good conduct under section 360 of the Code of Criminal Procedure,1973 instead of sentencing them at once to any punishment.

For the foregoing reasons,all the three appeals fail. As far as sentences imposed on accused nos.7,10 & 14 under section 325 I.P.C. are concerned, each of them is released on probation of good conduct on his entering into a bond for an amount of Rs.2000/- with one surety to appear and receive sentence when called upon during the period of six months from today and in the meantime, to keep peace and be of good behaviour. Subject to benefit of probation given to accused nos.7, 10 & 14 under section 360 of the Code of Criminal Procedure, 1973, Criminal Appeal no. 892/95 fails and is dismissed. Two other appeals i.e.Criminal Appeals no.1264/86 and 1265/86

are also accordingly dismissed. Muddamal to be disposed  
of in terms of directions given by the learned Judge in  
the impugned judgment.

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